



General Assembly

Substitute Bill No. 5934

January Session, 2009

* _____ HB05934PD _____ 050509 _____ *

**AN ACT CONCERNING PRESERVING NATURAL VEGETATION NEAR
WETLANDS AND WATERCOURSES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-38 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 As used in sections 22a-36 to 22a-45a, inclusive, as amended by this
4 act:

5 (1) "Commissioner" means the Commissioner of Environmental
6 Protection;

7 (2) "Person" means any person, firm, partnership, association,
8 corporation, limited liability company, company, organization or legal
9 entity of any kind, including municipal corporations, governmental
10 agencies or subdivisions thereof;

11 (3) "Municipality" means any town, consolidated town and city,
12 consolidated town and borough, city and borough;

13 (4) "Inland wetlands agency" means a municipal board or
14 commission established pursuant to and acting under section 22a-42;

15 (5) "Soil scientist" means an individual duly qualified in accordance
16 with standards set by the federal Office of Personnel Management;

17 (6) "Material" means any substance, solid or liquid, organic or
18 inorganic, including, but not limited to soil, sediment, aggregate, land,
19 gravel, clay, bog, mud, debris, sand, refuse or waste;

20 (7) "Waste" means sewage or any substance, liquid, gaseous, solid or
21 radioactive, which may pollute or tend to pollute any of the waters of
22 the state;

23 (8) "Pollution" means harmful thermal effect or the contamination or
24 rendering unclean or impure of any waters of the state by reason of
25 any waste or other materials discharged or deposited therein by any
26 public or private sewer or otherwise so as directly or indirectly to
27 come in contact with any waters;

28 (9) "Rendering unclean or impure" means any alteration of the
29 physical, chemical or biological properties of any of the waters of the
30 state, including, but not limited to change in odor, color, turbidity or
31 taste;

32 (10) "Discharge" means the emission of any water, substance or
33 material into waters of the state whether or not such substance causes
34 pollution;

35 (11) "Remove" includes, but shall not be limited to drain, excavate,
36 mine, dig, dredge, suck, bulldoze, dragline or blast;

37 (12) "Deposit" includes, but shall not be limited to, fill, grade, dump,
38 place, discharge or emit;

39 (13) "Regulated activity" means any operation within or use of a
40 wetland or watercourse involving removal or deposition of material,
41 or any obstruction, construction, alteration or pollution, of such
42 wetlands or watercourses, but shall not include the specified activities
43 in section 22a-40, as amended by this act;

44 (14) "License" means the whole or any part of any permit, certificate
45 of approval or similar form of permission which may be required of
46 any person by the provisions of sections 22a-36 to 22a-45a, inclusive, as

47 amended by this act;

48 (15) "Wetlands" means land, including submerged land, not
49 regulated pursuant to sections 22a-28 to 22a-35, inclusive, which
50 consists of any of the soil types designated as poorly drained, very
51 poorly drained, alluvial, and floodplain by the National Cooperative
52 Soils Survey, as may be amended from time to time, of the Natural
53 Resources Conservation Service of the United States Department of
54 Agriculture;

55 (16) "Watercourses" means rivers, streams, brooks, waterways,
56 lakes, ponds, marshes, swamps, bogs and all other bodies of water,
57 natural or artificial, vernal or intermittent, public or private, which are
58 contained within, flow through or border upon this state or any
59 portion thereof, not regulated pursuant to sections 22a-28 to 22a-35,
60 inclusive. Intermittent watercourses shall be delineated by a defined
61 permanent channel and bank and the occurrence of two or more of the
62 following characteristics: (A) Evidence of scour or deposits of recent
63 alluvium or detritus, (B) the presence of standing or flowing water for
64 a duration longer than a particular storm incident, and (C) the
65 presence of hydrophytic vegetation;

66 (17) "Natural vegetation" means naturally occurring shrubs, trees or
67 other plants growing around wetlands or watercourses, but does not
68 include lawns or manicured grass areas;

69 (18) "Natural vegetation's function" includes maintaining or
70 restoring the biological and ecological integrity of watercourses and
71 wetlands ecosystems by filtering stormwater runoff, protecting water
72 quality, preventing erosion, providing sedimentation control, reducing
73 the impact of flooding and minimizing the loss of property;

74 [(17)] (19) "Feasible" means able to be constructed or implemented
75 consistent with sound engineering principles;

76 [(18)] (20) "Prudent" means economically and otherwise reasonable
77 in light of the social benefits to be derived from the proposed regulated

78 activity provided cost may be considered in deciding what is prudent
79 and further provided a mere showing of expense will not necessarily
80 mean an alternative is imprudent.

81 Sec. 2. Section 22a-40 of the general statutes is repealed and the
82 following is substituted in lieu thereof (*Effective October 1, 2009*):

83 (a) The following operations and uses shall be permitted in
84 wetlands, areas around wetlands and watercourses, as of right:

85 (1) Grazing, farming, nurseries, gardening and harvesting of crops
86 and farm ponds of three acres or less essential to the farming
87 operation, agriculture as defined in section 1-1 and activities
88 conducted by, or under the authority of, the Department of
89 Environmental Protection or the Department of Agriculture for the
90 purposes of wetland or watercourse restoration or enhancement or
91 mosquito control. The provisions of this subdivision shall not be
92 construed to include road construction or the erection of buildings not
93 directly related to the farming operation, relocation of watercourses
94 with continual flow, filling or reclamation of wetlands or watercourses
95 with continual flow, clear cutting of timber except for the expansion of
96 agricultural crop land, the mining of top soil, peat, sand, gravel or
97 similar material from wetlands or watercourses for the purposes of
98 sale;

99 (2) A residential home (i) for which a building permit has been
100 issued, or (ii) on a subdivision lot, provided the permit has been issued
101 or the subdivision has been approved by a municipal planning, zoning
102 or planning and zoning commission as of the effective date of
103 promulgation of the municipal regulations pursuant to subsection (b)
104 of section 22a-42a, as amended by this act, or as of July 1, 1974,
105 whichever is earlier, and further provided no residential home shall be
106 permitted as of right pursuant to this subdivision unless the permit
107 was obtained on or before July 1, 1987;

108 (3) Boat anchorage or mooring;

109 (4) Uses incidental to the enjoyment and maintenance of residential
110 property, such property defined as equal to or smaller than the largest
111 minimum residential lot site permitted anywhere in the municipality,
112 provided in any town, where there are no zoning regulations
113 establishing minimum residential lot sites, the largest minimum lot site
114 shall be two acres. Such incidental uses shall include maintenance of
115 existing structures and landscaping but shall not include removal or
116 deposition of significant amounts of material from or onto a wetland
117 or watercourse or diversion or alteration of a watercourse;

118 (5) Construction and operation, by water companies as defined in
119 section 16-1 or by municipal water supply systems as provided for in
120 chapter 102, of dams, reservoirs and other facilities necessary to the
121 impounding, storage and withdrawal of water in connection with
122 public water supplies except as provided in sections 22a-401 and 22a-
123 403; [and]

124 (6) Maintenance relating to any drainage pipe which existed before
125 the effective date of any municipal regulations adopted pursuant to
126 section 22a-42a, as amended by this act, or July 1, 1974, whichever is
127 earlier, provided such pipe is on property which is zoned as residential
128 but which does not contain hydrophytic vegetation. For purposes of
129 this subdivision, "maintenance" means the removal of accumulated
130 leaves, soil, and other debris whether by hand or machine, while the
131 pipe remains in place;

132 (7) Activities conducted by, or under the authority of, the
133 Department of Environmental Protection for the purposes of wetlands
134 restoration and protection; and

135 (8) Activities conducted solely for natural resource management
136 that further natural vegetation's function.

137 (b) The following operations and uses shall be permitted, as
138 nonregulated uses in wetlands and watercourses, provided they do not
139 disturb the natural and indigenous character of the wetland or
140 watercourse by removal or deposition of material, alteration or

141 obstruction of water flow or pollution of the wetland or watercourse:

142 (1) Conservation of soil, vegetation, water, fish, shellfish and
143 wildlife; and

144 (2) Outdoor recreation including play and sporting areas, golf
145 courses, field trials, nature study, hiking, horseback riding, swimming,
146 skin diving, camping, boating, water skiing, trapping, hunting, fishing
147 and shellfishing where otherwise legally permitted and regulated.

148 (c) Any dredging or any erection, placement, retention or
149 maintenance of any structure, fill, obstruction or encroachment, or any
150 work incidental to such activities, conducted by a state agency, which
151 activity is regulated under sections 22a-28 to 22a-35, inclusive, or
152 sections 22a-359b to 22a-363f, inclusive, shall not require any permit or
153 approval under sections 22a-36 to 22a-45, inclusive, as amended by this
154 act.

155 Sec. 3. Section 22a-41 of the general statutes is repealed and the
156 following is substituted in lieu thereof (*Effective October 1, 2009*):

157 (a) For purposes of this section, "wetlands or watercourses" includes
158 aquatic, plant or animal life and habitats in wetlands or watercourses,
159 and "habitats" means areas or environments in which an organism or
160 biological population normally lives or occurs.

161 (b) In carrying out the purposes and policies of sections 22a-36 to
162 22a-45a, inclusive, as amended by this act, including matters relating to
163 regulating, licensing and enforcing of the provisions thereof, the
164 commissioner shall take into consideration all relevant facts and
165 circumstances, including, but not limited to:

166 (1) The environmental impact of the proposed regulated activity on
167 wetlands or watercourses;

168 (2) The applicant's purpose for, and any feasible and prudent
169 alternatives to, the proposed regulated activity which alternatives
170 would cause less or no environmental impact to wetlands or

171 watercourses;

172 (3) The relationship between the short-term and long-term impacts
173 of the proposed regulated activity on wetlands or watercourses and
174 the maintenance and enhancement of long-term productivity of such
175 wetlands or watercourses;

176 (4) Irreversible and irretrievable loss of wetland or watercourse
177 resources which would be caused by the proposed regulated activity,
178 including the extent to which such activity would foreclose a future
179 ability to protect, enhance or restore such resources, and any
180 mitigation measures which may be considered as a condition of
181 issuing a permit for such activity including, but not limited to,
182 measures to (A) prevent or minimize pollution or other environmental
183 damage, (B) maintain or enhance existing environmental quality, or
184 (C) in the following order of priority: Restore, enhance and create
185 productive wetland or watercourse resources;

186 (5) The character and degree of injury to, or interference with,
187 safety, health or the reasonable use of property which is caused or
188 threatened by the proposed regulated activity; [and]

189 (6) Impacts of the proposed regulated activity on wetlands or
190 watercourses outside the area for which the activity is proposed and
191 future activities associated with, or reasonably related to, the proposed
192 regulated activity which are made inevitable by the proposed
193 regulated activity and which may have an impact on wetlands or
194 watercourses; and

195 (7) The significance of the wetlands or watercourse, and the existing
196 or expected future development in the area around the wetland or
197 watercourse.

198 [(b)] (c) (1) In the case of an application which received a public
199 hearing pursuant to (A) subsection (k) of section 22a-39, or (B) a
200 finding by the inland wetlands agency that the proposed activity may
201 have a significant impact on wetlands or watercourses, a permit shall

202 not be issued unless the commissioner finds on the basis of the record
203 that a feasible and prudent alternative does not exist. In making his
204 finding, the commissioner shall consider the facts and circumstances
205 set forth in subsection (a) of this section. The finding and the reasons
206 therefor shall be stated on the record in writing.

207 (2) In the case of an application which is denied on the basis of a
208 finding that there may be feasible and prudent alternatives to the
209 proposed regulated activity which have less adverse impact on
210 wetlands or watercourses, the commissioner or the inland wetlands
211 agency, as the case may be, shall propose on the record in writing the
212 types of alternatives which the applicant may investigate provided this
213 subdivision shall not be construed to shift the burden from the
214 applicant to prove that he is entitled to the permit or to present
215 alternatives to the proposed regulated activity.

216 [(c) For purposes of this section, (1) "wetlands or watercourses"
217 includes aquatic, plant or animal life and habitats in wetlands or
218 watercourses, and (2) "habitats" means areas or environments in which
219 an organism or biological population normally lives or occurs.]

220 (d) A municipal inland wetlands agency shall not deny or condition
221 an application for a regulated activity in an area outside wetlands or
222 watercourses on the basis of an impact or effect on aquatic, plant, or
223 animal life unless such activity will likely impact or affect the physical
224 characteristics of such wetlands or watercourses.

225 (e) In carrying out the purposes and policies of sections 22a-36 to
226 22a-45a, inclusive, as amended by this act, including matters relating to
227 regulating, licensing and enforcing the provisions concerning the area
228 around wetlands and watercourses regulated pursuant to section 22a-
229 42a, as amended by this act, the commissioner or any municipal inland
230 wetlands agency shall:

231 (1) Require the applicant to establish that any regulated activity is
232 (A) consistent with the provisions of sections 22a-36 to 22a-45a,
233 inclusive, as amended by this act, and (B) unlikely to have an adverse

234 impact cumulatively, in time and area, on the natural vegetation's
235 function; and

236 (2) Determine the area subject to review with the goal of preserving
237 the natural vegetation in the greater of (A) the first one hundred feet
238 around any wetlands or watercourse, or (B) the area of floodplain
239 mapped by the Federal Emergency Management Agency.

240 Sec. 4. Section 22a-42a of the general statutes is repealed and the
241 following is substituted in lieu thereof (*Effective October 1, 2009*):

242 (a) The inland wetlands agencies authorized in section 22a-42 shall
243 through regulation provide for (1) the manner in which the boundaries
244 of inland wetland and watercourse areas in their respective
245 municipalities shall be established and amended or changed, (2) the
246 form for an application to conduct regulated activities, (3) notice and
247 publication requirements, (4) criteria and procedures for the review of
248 applications, and (5) administration and enforcement.

249 (b) No regulations of an inland wetlands agency including
250 boundaries of inland wetland and watercourse areas shall become
251 effective or be established until after a public hearing in relation
252 thereto is held by the inland wetlands agency. Any such hearing shall
253 be held in accordance with the provisions of section 8-7d. A copy of
254 such proposed regulation or boundary shall be filed in the office of the
255 town, city or borough clerk as the case may be, in such municipality,
256 for public inspection at least ten days before such hearing, and may be
257 published in full in such paper. A copy of the notice and the proposed
258 regulations or amendments thereto, except determinations of
259 boundaries, shall be provided to the commissioner at least thirty-five
260 days before such hearing. Such regulations and inland wetland and
261 watercourse boundaries may be from time to time amended, changed
262 or repealed, by majority vote of the inland wetlands agency, after a
263 public hearing in relation thereto is held by the inland wetlands
264 agency, in accordance with the provisions of section 8-7d. Regulations
265 or boundaries or changes therein shall become effective at such time as

266 is fixed by the inland wetlands agency, provided a copy of such
267 regulation, boundary or change shall be filed in the office of the town,
268 city or borough clerk, as the case may be. Whenever an inland
269 wetlands agency makes a change in regulations or boundaries it shall
270 state upon its records the reason why the change was made and shall
271 provide a copy of such regulation, boundary or change to the
272 Commissioner of Environmental Protection no later than ten days after
273 its adoption provided failure to submit such regulation, boundary or
274 change shall not impair the validity of such regulation, boundary or
275 change. All petitions submitted in writing and in a form prescribed by
276 the inland wetlands agency, requesting a change in the regulations or
277 the boundaries of an inland wetland and watercourse area shall be
278 considered at a public hearing held in accordance with the provisions
279 of section 8-7d. The failure of the inland wetlands agency to act within
280 any time period specified in this subsection, or any extension thereof,
281 shall not be deemed to constitute approval of the petition.

282 (c) (1) On and after the effective date of the municipal regulations
283 promulgated pursuant to subsection (b) of this section, no regulated
284 activity shall be conducted upon any inland wetland or watercourse
285 without a permit. Any person proposing to conduct or cause to be
286 conducted a regulated activity upon an inland wetland or watercourse
287 shall file an application with the inland wetlands agency of the town or
288 towns wherein the wetland or watercourse in question is located. The
289 application shall be in such form and contain such information as the
290 inland wetlands agency may prescribe. The date of receipt of an
291 application shall be determined in accordance with the provisions of
292 subsection (c) of section 8-7d. The inland wetlands agency shall not
293 hold a public hearing on such application unless the inland wetlands
294 agency determines that the proposed activity may have a significant
295 impact on wetlands or watercourses, a petition signed by at least
296 twenty-five persons who are eighteen years of age or older and who
297 reside in the municipality in which the regulated activity is proposed,
298 requesting a hearing is filed with the agency not later than fourteen
299 days after the date of receipt of such application, or the agency finds

300 that a public hearing regarding such application would be in the
301 public interest. An inland wetlands agency may issue a permit without
302 a public hearing provided no petition provided for in this subsection is
303 filed with the agency on or before the fourteenth day after the date of
304 receipt of the application. Such hearing shall be held in accordance
305 with the provisions of section 8-7d. If the inland wetlands agency, or
306 its agent, fails to act on any application within thirty-five days after the
307 completion of a public hearing or in the absence of a public hearing
308 within sixty-five days from the date of receipt of the application, or
309 within any extension of any such period as provided in section 8-7d,
310 the applicant may file such application with the Commissioner of
311 Environmental Protection who shall review and act on such
312 application in accordance with this section. Any costs incurred by the
313 commissioner in reviewing such application for such inland wetlands
314 agency shall be paid by the municipality that established or authorized
315 the agency. Any fees that would have been paid to such municipality if
316 such application had not been filed with the commissioner shall be
317 paid to the state. The failure of the inland wetlands agency or the
318 commissioner to act within any time period specified in this
319 subsection, or any extension thereof, shall not be deemed to constitute
320 approval of the application.

321 (2) An inland wetlands agency may delegate to its duly authorized
322 agent the authority to approve or extend an activity that is not located
323 in a wetland or watercourse when such agent finds that the conduct of
324 such activity would result in no greater than a minimal impact on any
325 wetland or watercourse provided such agent has completed the
326 comprehensive training program developed by the commissioner
327 pursuant to section 22a-39. Notwithstanding the provisions for receipt
328 and processing applications prescribed in subdivision (1) of this
329 subsection, such agent may approve or extend such an activity at any
330 time. Any person receiving such approval from such agent shall,
331 within ten days of the date of such approval, publish, at the applicant's
332 expense, notice of the approval in a newspaper having a general
333 circulation in the town wherein the activity is located or will have an

334 effect. Any person may appeal such decision of such agent to the
335 inland wetlands agency within fifteen days after the publication date
336 of the notice and the inland wetlands agency shall consider such
337 appeal at its next regularly scheduled meeting provided such meeting
338 is no earlier than three business days after receipt by such agency or its
339 agent of such appeal. The inland wetlands agency shall, at its
340 discretion, sustain, alter or reject the decision of its agent or require an
341 application for a permit in accordance with subdivision (1) of
342 subsection (c) of this section.

343 (d) (1) In granting, denying or limiting any permit for a regulated
344 activity the inland wetlands agency, or its agent, shall consider the
345 factors set forth in section 22a-41, as amended by this act, and such
346 agency, or its agent, shall state upon the record the reason for its
347 decision. In granting a permit the inland wetlands agency, or its agent,
348 may grant the application as filed or grant it upon other terms,
349 conditions, limitations or modifications of the regulated activity which
350 are designed to carry out the policy of sections 22a-36 to 22a-45,
351 inclusive, as amended by this act. Such terms may include any
352 reasonable measures which would mitigate the impacts of the
353 regulated activity and which would (A) prevent or minimize pollution
354 or other environmental damage, (B) maintain or enhance existing
355 environmental quality, or (C) in the following order of priority:
356 Restore, enhance and create productive wetland or watercourse
357 resources. No person shall conduct any regulated activity within an
358 inland wetland or watercourse which requires zoning or subdivision
359 approval without first having obtained a valid certificate of zoning or
360 subdivision approval, special permit, special exception or variance or
361 other documentation establishing that the proposal complies with the
362 zoning or subdivision requirements adopted by the municipality
363 pursuant to chapters 124 to 126, inclusive, or any special act. The
364 agency may suspend or revoke a permit if it finds after giving notice to
365 the permittee of the facts or conduct which warrant the intended action
366 and after a hearing at which the permittee is given an opportunity to
367 show compliance with the requirements for retention of the permit,

368 that the applicant has not complied with the conditions or limitations
369 set forth in the permit or has exceeded the scope of the work as set
370 forth in the application. The applicant shall be notified of the agency's
371 decision by certified mail within fifteen days of the date of the decision
372 and the agency shall cause notice of their order in issuance, denial,
373 revocation or suspension of a permit to be published in a newspaper
374 having a general circulation in the town wherein the wetland or
375 watercourse lies. In any case in which such notice is not published
376 within such fifteen-day period, the applicant may provide for the
377 publication of such notice within ten days thereafter.

378 (2) Any permit issued under this section for the development of
379 property for which an approval is required under section 8-3, 8-25 or 8-
380 26 shall be valid for five years provided the agency may establish a
381 specific time period within which any regulated activity shall be
382 conducted. Any permit issued under this section for any other activity
383 shall be valid for not less than two years and not more than five years.
384 Any such permit shall be renewed upon request of the permit holder
385 unless the agency finds that there has been a substantial change in
386 circumstances which requires a new permit application or an
387 enforcement action has been undertaken with regard to the regulated
388 activity for which the permit was issued provided no permit may be
389 valid for more than ten years.

390 (e) The inland wetlands agency may require a filing fee to be
391 deposited with the agency. The amount of such fee shall be sufficient
392 to cover the reasonable cost of reviewing and acting on applications
393 and petitions, including, but not limited to, the costs of certified
394 mailings, publications of notices and decisions and monitoring
395 compliance with permit conditions or agency orders.

396 (f) If a municipal inland wetlands agency regulates activities within
397 areas around wetlands or watercourses, such regulation shall (1) be in
398 accordance with the provisions of the inland wetlands regulations
399 adopted by such agency related to application for, and approval of,
400 activities to be conducted in wetlands or watercourses, and (2) apply

401 only to those activities which are likely to impact or affect wetlands or
402 watercourses in the immediate vicinity of the regulated activity or
403 throughout the watershed of such wetland or watercourse.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	22a-38
Sec. 2	<i>October 1, 2009</i>	22a-40
Sec. 3	<i>October 1, 2009</i>	22a-41
Sec. 4	<i>October 1, 2009</i>	22a-42a

Section 1	<i>October 1, 2009</i>	22a-38
Sec. 2	<i>October 1, 2009</i>	22a-40
Sec. 3	<i>October 1, 2009</i>	22a-41
Sec. 4	<i>October 1, 2009</i>	22a-42a

PD *Joint Favorable Subst.*